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Attorneys for Plaintiffs and Counter-  
Defendants ProElite, Inc.; Real Sport, Inc.;  
ProElite.com (f/k/a EliteXC.com); and  
EliteXC Live.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

PRO ELITE, INC., a New Jersey ) Case No. 2:07-cv-02015-GAF-VBK  
corporation; REAL SPORT, INC., a )  
California corporation; ELITEXC.COM, )  
INC., a California corporation; and ) ~~PROPOSED~~ AMENDED  
ELITEXC LIVE, INC., a California ) COMPLAINT FOR:  
corporation, )

Plaintiffs and Counter-Defendants, )

v. )

WALLID ISMAIL, an individual; )  
WALLID ISMAIL PROMOCOES E )  
EVENTOS LTDA EPP, and DOES 1 )  
through 10, inclusive )

Defendants and Counter-Claimants. )

v. )

DOUG DELUCA; DAVID )  
MARSHALL; KURT BRENDLINGER; )  
ERIC PULIER; GARY SHAW; SANTA )  
MONICA CAPITAL PARTNERS; PRO )  
ELITE II; I FIGHT, INC.; and XYZ )  
DEFENDANTS, )

Third Party Defendants. )

- (1) DECLARATORY RELIEF;
- (2) NEGLIGENT MISREPRESENTATION;
- (3) UNFAIR COMPETITION (COMMON LAW); and
- (4) VIOLATION OF THE CALIFORNIA UNFAIR BUSINESS PRACTICES ACT, BUSINESS AND PROFESSIONS CODE §§ 17200, *et seq.*

1 Plaintiffs complain against defendants as follows:

2 **THE PARTIES**

3 1. Plaintiff ProElite Inc. ("ProElite") is a corporation organized and  
 4 existing under the laws of the State of New Jersey, and transacting business in the  
 5 County of Los Angeles, State of California. ProElite and its affiliates, plaintiffs  
 6 Real Sport, Inc., ProElite.com (formerly known as EliteXC.com, Inc. and I-Fight,  
 7 Inc.) and EliteXC Live were formed to capitalize on the popularity and growth of  
 8 mixed martial arts ("MMA"), in which athletes use a combination of a variety of  
 9 fighting styles, including boxing, judo, jiu jitsu, karate, kickboxing, mui thai, tae  
 10 kwan do, and wrestling.

11 2. Plaintiff Real Sport, Inc. ("Real Sport") is a corporation organized and  
 12 existing under the laws of the State of California, and transacting business in the  
 13 County of Los Angeles, State of California. Real Sport is a wholly owned  
 14 subsidiary of ProElite, and is the holding company of ProElite.com and EliteXC  
 15 Live.

16 3. Plaintiff ProElite.com is a corporation organized and existing under  
 17 the laws of the State of California, and transacting business in the County of  
 18 Los Angeles, State of California. EliteXC.com was formerly known as  
 19 "EliteXC.com" and "I-Fight, Inc.," and was formed to exploit MMA as a business  
 20 through the Internet.

21 4. Plaintiff EliteXC Live ("EliteXC Live") is a corporation organized  
 22 and existing under the laws of the State of California, and transacting business in  
 23 the County of Los Angeles, State of California. EliteXC Live was formerly  
 24 "MMA Live, Inc." and "Jungle Fight Championship, Inc.," and was formed to  
 25 exploit MMA as a business through producing and promoting live events featuring  
 26 top fighters in MMA.

27 5. Defendant Wallid Ismail is an individual, a native of Brazil, and a  
 28 former top MMA fighter known among MMA fans as "The Gracie Killer" for his

1 tournament wins over four members of the Gracie family, including an upset win  
 2 over legendary Brazilian jiu jitsu fighter Royce Grace, whom Ismail choked  
 3 unconscious in less than five minutes.

4 6. Defendant Wallid Ismail Promocoes E Eventos LTDA EPP ("Ismail  
 5 Promocoes") is, according to plaintiffs' information and belief, a business entity  
 6 formed under the laws of Brazil, and transacting business in the County of Los  
 7 Angeles, State of California. According to Wallid Ismail, Ismail Promocoes is a  
 8 company that Ismail owns and which is entitled to his exclusive services and to the  
 9 exclusive use of his name and likeness in connection with MMA. Wallid Ismail  
 10 and Ismail Promocoes are referred to herein collectively as "Ismail."

#### 11 JURISDICTION AND VENUE

12 7. Jurisdiction over this action is proper pursuant to 28 U.S.C. § 1332,  
 13 based on the complete diversity of citizenship between plaintiffs and defendants.  
 14 The amount in controversy exceeds \$75,000 exclusive of interests and costs, as  
 15 will more fully appear herein.

16 8. This Court has personal jurisdiction over defendants because they  
 17 transact business in California and have sufficient minimum contacts with  
 18 California in connection with the events giving rise to this action and the  
 19 Counterclaim And Third Party Complaint in this action.

20 9. Venue is proper within this district pursuant to 28 U.S.C. § 1391, as  
 21 the transactions and occurrences giving rise to the claims alleged herein took place  
 22 within this district, and defendants do business in this district.

#### 23 GENERAL ALLEGATIONS

24 10. Beginning in or around June 2006, the Third Party Defendants in this  
 25 action (Santa Monica Capital Partners, David Marshall, Doug DeLuca, Eric Pulier,  
 26 and Kurt Brendlinger) and Ismail entered into negotiations to form a company to  
 27 exploit the growing popularity of MMA in the United States and throughout the  
 28 world. In or around August 2006, the Third Party Defendants formed plaintiff

1 ProElite.com (then named "I-Fight, Inc.") and continued their negotiations with  
2 Ismail on behalf of and for the benefit of ProElite.com. In the course of these  
3 negotiations, Ismail represented that he was an experienced organizer and promoter  
4 of MMA events in Brazil and Japan, and that he and/or his company owned the  
5 rights to the trademarks, design marks, television shows and other intellectual  
6 property relating to "Jungle Fight," "Jungle Fight Championship" and the website  
7 www.junglefightchampionship.com. (the "Jungle Fight IP"). The Jungle Fight  
8 Championship is an MMA event that was first staged in Brazil's Amazon rain  
9 forest to raise worldwide awareness of the need for preservation and conservation  
10 of the rain forest. The Jungle Fight Championship had become well known among  
11 MMA fans and was believed to be one of the premier MMA events worldwide.

12 11. In or around August 2006, ProElite.com developed a business plan for  
13 the exploitation of MMA throughout the world through live events and through the  
14 Internet, disclosed their business plan to Ismail, began raising the necessary capital  
15 to carry out their business plan, and engaged attorneys to draft agreements whereby  
16 Wallid Ismail, through Ismail Promocoos, would provide his services to  
17 ProElite.com and its affiliates as an MMA organizer and promoter, and would  
18 grant plaintiffs the exclusive use of his name and likeness and an exclusive license  
19 to the Jungle Fight IP.

20 12. In or around September 2006, in furtherance of their MMA business  
21 plan, the Third Party Defendants formed plaintiff EliteXC Live as a sister  
22 corporation to ProElite.com and formed plaintiff Real Sport to be the sole  
23 shareholder of EliteXC Live and ProElite.com.

24 13. In or around September 2006, in furtherance of their MMA business  
25 plan, plaintiffs Real Sport, EliteXC Live and ProElite.com arranged a \$10 million  
26 private placement of securities and a reverse merger transaction whereby the  
27 shareholders of Real Sport would exchange their shares of stock in Real Sport for  
28 shares of stock in a publicly-held corporation to be re-named "ProElite, Inc."

1 Plaintiffs scheduled a closing of this private placement and reverse merger for  
2 September 29, 2006.

3 14. In or around September 2006, at the request of Wallid Ismail,  
4 ProElite.com began making payments to Ismail Promocoes of \$5,000 per week in  
5 advance of the September 29, 2006 closing, and with the understanding that Ismail  
6 would agree to provide his services and the Jungle Fight IP to plaintiffs and  
7 participate in the closing.

8 15. On or about September 29, 2006, after extensive negotiations over the  
9 terms of the contracts to be entered into between plaintiffs and Ismail Promocoes,  
10 and just prior to the scheduled closing of the private placement and reverse merger  
11 transactions, Ismail refused to execute the agreements with plaintiffs. In particular,  
12 Ismail refused to represent and warrant that he and Ismail Promocoes were the sole  
13 owners of the Jungle Fight IP as he had claimed, and plaintiffs obtained  
14 information indicating that Antonio Inoki and possibly other third parties might  
15 have ownership interests in and possibly control over this intellectual property.

16 16. In the days following Ismail's September 29, 2006 refusal to execute  
17 agreements with plaintiffs, and because of the uncertainty over whether Ismail and  
18 Ismail Promocoes owned and controlled the Jungle Fight IP, plaintiffs developed a  
19 modified business plan to exploit MMA without reference to Ismail and without  
20 using the Jungle Fight IP, entered into contracts with an experienced fight  
21 promoter to organize and promote the MMA live events, and closed the private  
22 placement and reverse merger transactions necessary to carry out the MMA  
23 business plan. The private placement and reverse merger transactions closed on  
24 the basis of a business plan that did not include Ismail or the Jungle Fight IP.

25 17. In or around October 2006, plaintiffs entered into a three-year  
26 agreement with Showtime to televise plaintiffs' MMA events.  
27  
28

1 18. In or around November and December 2006, plaintiffs learned  
 2 through the Internet that Ismail was using plaintiffs' business plan to form and  
 3 operate a competing business.

4 19. On or about December 14, 2006, plaintiffs held a press conference in  
 5 which they publicly announced the launching of their new MMA business and  
 6 their contract with Showtime to televise plaintiffs' MMA events.

7 20. On or about December 14, 2006, plaintiffs received a letter from  
 8 attorneys for Ismail making reference to plaintiffs' press conference and  
 9 demanding that plaintiffs compensate Ismail based on an alleged "fully enforceable  
 10 agreement" and asserting various other theories on which Ismail contends he is  
 11 entitled to compensation from plaintiffs.

#### 12 **FIRST CLAIM**

13 (For Declaratory Relief Against All Defendants)

14 21. Plaintiffs incorporate herein by reference paragraphs 1 through 20 of  
 15 this complaint.

16 22. An actual controversy has arisen and exists between plaintiffs and  
 17 defendants, in that plaintiffs contend that:

- 18 (a) There is no enforceable agreement or any agreement between  
 19 plaintiffs and Ismail relating to plaintiffs' business, the MMA  
 20 business or anything else;
- 21 (b) Plaintiffs made no agreement to compensate Ismail for doing  
 22 anything in connection with plaintiffs' preparation of a PPM;
- 23 (c) Plaintiffs made no agreement to compensate Ismail for  
 24 information of any kind;
- 25 (d) Plaintiffs did not receive any confidential or proprietary  
 26 information from Ismail;
- 27 (e) Plaintiffs are not using Ismail's name or likeness in their  
 28 business, are not using the Jungle Fight IP in their business, and

1 are not using or benefiting from anything that Ismail provided  
2 to plaintiffs during the course of their negotiations;

3 (f) The negotiations between plaintiffs and Ismail terminated in  
4 September 2006 without any agreement being reached because  
5 Ismail refused to agree to the terms that plaintiffs offered to  
6 him, and because Ismail would not warrant that he owned the  
7 Jungle Fight IP; and

8 (g) In fact, the transaction that plaintiffs were negotiating with  
9 Ismail could not have been consummated because the oral  
10 representations that Ismail made to plaintiffs regarding his  
11 ownership of the Jungle Fight IP were false, in that Ismail did  
12 not have ownership or exclusive ownership of the Jungle Fight  
13 IP.

14 23. Defendants dispute these contentions, and contend in their letter of  
15 December 14, 2006 that there is a "fully enforceable agreement" between plaintiffs  
16 and defendants and that defendants are entitled to compensation from plaintiffs  
17 pursuant to this agreement and on various other theories asserted in the letter,  
18 including quantum meruit for services allegedly rendered and for using  
19 confidential information that defendants allegedly provided.

20 24. A judicial declaration is appropriate and necessary at this time so that  
21 the parties may understand their rights and obligations, if any, under the purported  
22 "fully enforceable agreement," and because plaintiffs have no adequate remedy at  
23 law to resolve this controversy. A judicial declaration is also appropriate and  
24 necessary at this time to avoid a multiplicity of actions, to prevent defendants from  
25 interfering with the development of plaintiffs' business by asserting false claims  
26 against plaintiffs, and to enable plaintiffs to raise such additional funds as may be  
27 necessary to support and expand their business.

28



**SECOND CLAIM**

(For Negligent Misrepresentation Against All Defendants)

25. Plaintiffs incorporate herein by reference paragraphs 1 through 20 of this complaint.

26. Beginning in or around June 2006 and continuing through September 2006, Ismail represented initially to the Third Party Defendants and thereafter to plaintiffs that Ismail was the exclusive owner of the Jungle Fight IP.

27. When Ismail made his representations to the Third Party Defendants and to plaintiffs that he was the exclusive owner of the Jungle Fight IP, he had no reasonable grounds for believing these representations to be true.

28. When Ismail made his representations to the Third Party Defendants and to plaintiffs that he was the exclusive owner of the Jungle Fight IP, he made these representations for the purpose of inducing first the Third Party Defendants and thereafter plaintiffs to rely on his representations and in reliance on his representations to form a new MMA business based in part on the Jungle Fight IP, to pay Ismail for the Jungle Fight IP, and to offer Ismail equity participation in the new business.

29. When Ismail made his representations to the Third Party Defendants and to plaintiffs that he was the exclusive owner of the Jungle Fight IP, the true facts were that Ismail did not have exclusive ownership of the Jungle Fight IP, and in fact did not have a chain of title and all trademark papers to the Jungle Fight IP, did not know whether the Jungle Fight IP was encumbered with any liens; did not control the Jungle Fight IP copyrights, and did not have licenses for any of the music used in the Jungle Fight events.

30. When Ismail made his representations to the Third Party Defendants and to plaintiffs that he was the exclusive owner of the Jungle Fight IP, the Third Party Defendants and plaintiffs were ignorant of the true facts and reasonably relied on Ismail's representations. In reliance on Ismail's representations,



1 plaintiffs engaged legal counsel to prepare a private placement memorandum based  
 2 on plaintiffs' anticipated ownership of the Jungle Fight IP; to prepare proposed  
 3 agreements with Ismail whereby he would transfer the rights to the Jungle Fight IP  
 4 to plaintiffs, would contribute his services to plaintiffs, and would receive an  
 5 equity interest in the new MMA business plaintiffs were forming; and to negotiate  
 6 with Ismail's two attorneys for the purpose of obtaining Ismail's agreement to  
 7 participate in the new MMA business. In further reliance on Ismail's  
 8 representations, plaintiffs incurred expenses and made payments to Ismail in  
 9 September 2006 totaling \$15,000.

10 31. As a direct and proximate result of Ismail's misrepresentations to  
 11 plaintiffs, plaintiffs have been damaged in amounts in excess of \$75,000,  
 12 according to proof at trial.

### 13 **THIRD CLAIM**

14 (For Common Law Unfair Competition Against All Defendants)

15 32. Plaintiffs incorporate herein by reference paragraphs 1 through 20 and  
 16 26 through 31 of this complaint.

17 33. When Ismail through his attorney sent his December 14, 2006 letter to  
 18 plaintiffs, Ismail had already formed an MMA business to compete with plaintiffs.  
 19 In or around February 2007, Ismail entered into a business transaction with a  
 20 company called "Infotec" for the purpose of competing against plaintiffs. Later, in  
 21 or around 2007 or 2008, Ismail entered into a second business transaction for the  
 22 purpose of competing with plaintiffs in the MMA business.

23 34. Ismail has gained an unfair commercial advantage in his efforts to  
 24 compete with plaintiffs by taking and using plaintiffs' business plan in his own  
 25 business, by publicizing and repeating the baseless claims asserted in his  
 26 December 14, 2008 letter to those involved in the MMA business and who might  
 27 do business with plaintiffs, and by falsely portraying himself as the victim of  
 28 unscrupulous business practices by plaintiffs, all for the purpose of discouraging

1 others to do business with plaintiffs and thereby to provide Ismail with a  
2 competitive advantage.

3 35. Plaintiffs have been damaged, in an amount to be proven at trial, by  
4 Ismail's deceptive and unfair business practices, as alleged above.

5 36. As a direct and proximate result of Ismail's deceptive and unfair  
6 business practices, plaintiffs have suffered, and unless Ismail is restrained and  
7 enjoined, will continue to suffer, great and irreparable harm in their business  
8 relationships and great and irreparable harm to their competitive position in the  
9 marketplace, for which damages would not be an adequate remedy.

10 37. Ismail's conduct as alleged herein has been willful and malicious, and  
11 was done with a specific intent to harm plaintiffs, so as to justify an award of  
12 punitive damages in an amount sufficient to punish Ismail for his wrongful conduct  
13 and make an example of him.

14 **FOURTH CLAIM**

15 (For Violation of the Unfair Business Practices Act, Bus. & Prof. Code § § 17200  
16 *et seq.*, Against All Defendants)

17 38. Plaintiffs incorporate herein by reference paragraphs 1 through 20, 26  
18 through 31 and 33 through 34 of this complaint.

19 39. By misrepresenting to plaintiffs that he was the exclusive owner of the  
20 Jungle Fight IP for the purpose of inducing plaintiffs to pay him for the Jungle  
21 Fight IP, to include him in their new MMA business as an equity owner, and to pay  
22 him money in September 2006 and thereafter, Ismail was committing unlawful,  
23 unfair and fraudulent business practices in violation of California Business and  
24 Professions Code section 17200.

25 40. By making false claims that plaintiffs' wrongfully deprived him of an  
26 equity interest in ProElite, by portraying himself as a victim, and by publicizing  
27 these claims to those involved in the MMA industry for the purpose of  
28 discouraging others from doing business with plaintiffs, Ismail was committing

1 and continues to commit unlawful, unfair and fraudulent business practices in  
2 violation of California Business and Professions Code section 17200.

3 41. As a direct and proximate result of Ismail's unlawful, unfair and  
4 fraudulent business practices, plaintiffs have suffered, and unless defendants are  
5 restrained and enjoined, will continue to suffer, great and irreparable harm in their  
6 business relationships and great and irreparable harm to their competitive position  
7 in the marketplace, for which damages would not be an adequate remedy.

8 42. Plaintiffs are entitled to an order of restitution, compelling Ismail to  
9 return everything of value he has taken from plaintiffs and all profits he has  
10 derived from his unlawful, unfair and fraudulent business practices. Plaintiffs are  
11 also entitled to an injunction prohibiting Ismail from continuing his unlawful,  
12 unfair and fraudulent business practices.

13 WHEREFORE, plaintiffs pray for judgment against defendants as follows:

14 On the First Claim for declaratory relief:

15 1. For a judicial declaration that there is no enforceable agreement or  
16 any agreement between plaintiffs and Ismail relating to plaintiffs' business, the  
17 MMA business or anything else; that plaintiffs made no agreement to compensate  
18 Ismail for doing anything in connection with plaintiffs' preparation of a PPM; that  
19 plaintiffs made no agreement to compensate Ismail for information of any kind;  
20 that plaintiffs did not receive any confidential or proprietary information from  
21 Ismail; that plaintiffs are not using Ismail's name or likeness in their business, are  
22 not using the Jungle Fight IP in their business, and are not using or benefiting from  
23 anything that Ismail provided to plaintiffs during the course of their negotiations;  
24 that negotiations between plaintiffs and Ismail terminated in September 2006  
25 without any agreement being reached because Ismail refused to agree to the terms  
26 that plaintiffs offered to him, and because Ismail would not represent and warrant  
27 that he owned the Jungle Fight IP; and that the transaction that plaintiffs were  
28 negotiating with Ismail could not be consummated because the oral representations

1 that Ismail made to plaintiffs regarding his ownership of the Jungle Fight IP were  
2 false, in that neither Ismail nor Ismail Promocoos had or has exclusive ownership  
3 of the Jungle Fight IP;

4 On the Second Claim for negligent misrepresentation:

5 2. For compensatory damages according to proof;

6 On the Third Claim for common law unfair competition:

7 3. For an order restraining and enjoining defendants from continuing to  
8 engaging in false and deceptive business practices;

9 4. For compensatory damages according to proof;

10 5. For punitive damages according to proof;

11 On the Fourth Claim for violation of the Unfair Business Practices Act:

12 6. For an order restraining and enjoining defendants from continuing to  
13 engage in unlawful, unfair and fraudulent business practices;

14 7. For an order that defendants restore to plaintiffs everything of value  
15 they have taken from plaintiffs and all profits wrongfully derived from their  
16 unlawful, unfair and fraudulent business practices;

17 On each claim:

18 8. For plaintiffs' costs of suit; and

19 9. For such other and further relief as the court deems just and proper.

20  
21 Dated: June 23, 2008

TROYGOULD PC

22  
23 By: /s/ Jeffrey W. Kramer

Jeffrey W. Kramer  
Attorneys for Plaintiffs and Counter-  
Defendants ProElite, Inc.; Real Sport,  
Inc.; ProElite.com (f/k/a EliteXC.com);  
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